

SENATE BILL NO. 453

INTRODUCED BY G. PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT ONLY THE PARTIES, ON MOTION, AND NOT A HEARINGS OFFICER MAY AMEND THE PLEADINGS IN CONTESTED CASE HEARINGS SUBJECT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-623, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-623, MCA, is amended to read:

"2-4-623. Final orders -- notification -- availability. (1) A final decision or order adverse to a party in a contested case ~~shall~~ must be in writing or stated in the record. A final decision ~~shall~~ must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, ~~shall~~ must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) Findings of facts ~~shall~~ must be based exclusively on the evidence and on matters officially noticed. A party may move to amend the party's pleadings to conform to the evidence as provided in Rule 15(b) of the Montana Rules of Civil Procedure. A hearings officer may not amend the pleadings on the hearings officer's own motion. The pleadings may not be amended arbitrarily or perfunctorily.

(3) Each conclusion of law ~~shall~~ must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision ~~shall~~ must include a ruling upon each proposed finding.

(5) Parties ~~shall~~ must be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order ~~shall~~ must be delivered or mailed forthwith to each party and to ~~his~~ the party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. ~~No such~~ An agency decision or order is not valid or effective against any person or party ~~nor may it~~ and may not be invoked by the agency for any purpose until it has been made available for public inspection ~~as herein required~~. This provision is not applicable in favor of any person or party who has actual knowledge ~~thereof~~ of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

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